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Human Rights Council
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Opinion No. 46/2022 concerning Arash Ganji, Keyvan Bajan, Baktash Abtin and Reza Khandan Mahabadi (Islamic Republic of Iran)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,¹ on 16 February 2022, the Working Group transmitted to the Government of the Islamic Republic of Iran a communication concerning Arash Ganji, Keyvan Bajan, Baktash Abtin and Reza Khandan Mahabadi. The Government submitted a late response on 21 June 2022. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability,

¹ [A/HRC/36/38](#).

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Baktash Abtin was a citizen of the Islamic Republic of Iran, born on 16 December 1974, who usually resided in Tehran. Mr. Abtin reportedly died on 8 January 2022 in custody. He had been imprisoned for 16 months.

5. The source reports that Mr. Abtin was a celebrated poet, screenwriter, filmmaker and a board member of the Iranian Writers' Association, which is a professional writers' organization with a history spanning over 50 years. He published five books of poetry and released two documentaries. Despite the international recognition, Mr. Abtin's books and films have been banned in the Islamic Republic of Iran.

6. Keyvan Bajan is a citizen of the Islamic Republic of Iran, born on 21 April 1972, who usually resides in Tehran.

7. The source reports that Mr. Bajan is a novelist, journalist and former board member of the Iranian Writers' Association, who has recently finished his trustee term with that organization. He has published works on the oral history of the Islamic Republic of Iran and edited a collection of interviews and notes by a famous novelist. Mr. Bajan reportedly writes for some of the most prominent literary and cultural magazines in the Islamic Republic of Iran and for newspapers, and for weekly and other publications.

8. Reza Khandan Mahabadi is a citizen of the Islamic Republic of Iran, born on 7 October 1960, who usually resides in Tehran.

9. According to the source, Mr. Khandan Mahabadi is an author, literary critic, popular culture researcher and a board member of the banned Iranian Writers' Association. Mr. Khandan Mahabadi started his studies of fiction in 1978, when he wrote and published a collection of children's stories. Reportedly, he has always been targeted by the authorities, who have censored his work. He is the editor of a 19-volume, encyclopaedic collection of Iranian fiction, and has also edited another multi-volume book of selected short stories from the Islamic Republic of Iran that were written in the past 80 years. Mr. Khandan Mahabadi has himself written a collection of short fiction.

10. Arash Ganji is a citizen of the Islamic Republic of Iran, born on 11 December 1986, who usually resides in Tehran.

11. According to the source, Mr. Ganji is a prominent writer and translator, and he is also the Secretary of the Iranian Writers' Association. In 2017, Mr. Ganji translated into Persian a collection of articles by different authors about Kurds in the civil war in the Syrian Arab Republic. Mr. Ganji has other translation credits of books concerning social and political issues.

12. The source further submits that the above-mentioned individuals have all served as leaders and board members of the Iranian Writers' Association, which has been banned by the authorities. Writers belonging to the Association have allegedly been targeted, detained and killed for their membership in this organization. Shortly after the establishment of the Islamic Republic of Iran, the Iranian Writers' Association's leadership was arrested, and members were killed. In 1993, a consulting assembly comprising 30 writers revived the group. In 1994, a public statement by over 100 writers in support of free expression and against the censorship reportedly led to further repression by the authorities, which opened criminal cases against writers belonging to the Association. In the late 1990s, it became known that several writers, poets and dissidents who belonged to the Association had been murdered.

Cases of Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi

13. The source reports that on 22 January 2019, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi appeared for a hearing before Branch 28 of the Revolution Court, where the three

writers – all co-defendants in the case – were briefed on the indictment accusing them of colluding against national security and of propaganda against the State.

14. According to the source, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi have chosen a prominent lawyer to defend them. However, the presiding judge has denied them their right to be represented by a lawyer of their choice and mandated that they represent themselves. The three writers refused to do so.

15. In response to their firm commitment to secure legal representation for themselves, the judge reportedly increased the amount of their bail tenfold, ultimately setting the cost of bail for each writer at 10 billion Iranian rials (approximately \$240,000). As a result, the defendants could not afford to pay bail for their conditional release.

16. On 22 January 2019, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi were therefore detained and taken to Evin prison in Tehran, in accordance with the article 138 of the Code of Criminal Procedure of the Islamic Republic of Iran, pertaining to deprivation of liberty in the case of inability to pay the cost of bail.

17. After colleagues and supporters crowdfunded sufficient sums to secure bail for Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi, the three men were conditionally released from the prison, pending trials. The last days of the writers' trial were 27 and 28 April 2019. On 15 May 2019, the judge at the Branch 28 of the Revolution Court convicted and sentenced each of the three defendants to six years in prison. The sentences included five years for colluding against national security (Iranian Penal Code, book 5, chap. 16, art. 610) and sentences of one year for propaganda against the State (Iranian Penal Code, book 5, chap. 1, art. 500).

18. The source specifies that Mr. Bajan, Mr. Khandan Mahabadi and Mr. Abtin have been sentenced for: colluding against national security, as a result of their leadership in the Iranian Writers' Association and their participation in a gathering at the graves of writers killed in the 1980s and 1990s; and propaganda against the State, as a result of the publication, for distribution among supporters of the Association, of material celebrating the fiftieth anniversary of the Association.

19. Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi remain on conditional release pending their appeal. In December 2019, the Appellate Court confirmed sentences of Mr. Abtin and Mr. Khandan Mahabadi; Mr. Bajan received a reduction in his sentence, from six years to three-and-a-half years.

20. The source reports that on 27 September 2020, amid the coronavirus disease (COVID-19) pandemic, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi entered Evin prison to begin serving their prison sentences in Ward 8.

21. It is further reported that on 8 January 2022, Mr. Abtin died from COVID-19 in Sasan Hospital while in State custody. He was granted temporary furlough by the authorities after some delay and was transferred to Taleghani and Sasan Hospitals, for a limited time.

Case of Mr. Ganji

22. According to the source, Mr. Ganji was arrested on 22 December 2019 at his home, in the course of a raid by officers of the Ministry of Intelligence, who were posing as postal workers. The officers called Mr. Ganji's phone, which was answered by a family member who lives in the same apartment. The officers, claiming to have a package, requested to deliver it to Mr. Ganji personally.

23. The officers followed Mr. Ganji's family member into the apartment and, upon seeing Mr. Ganji, immediately entered the home. Five armed officers were present. One officer showed Mr. Ganji a search warrant, after which they began searching the family's home and seizing Mr. Ganji's personal belongings, including his laptop, books and writings.

24. While no reason for the arrest was given at the time, the source asserts that Mr. Ganji's translation of a collection of articles by different authors about Kurds in the civil war in the Syrian Arab Republic became the subject of his imprisonment.

25. Following the raid, Mr. Ganji was taken to Ward 209 of Evin Prison, where he was subjected to interrogation. He was denied visits from both his family and legal representation. After approximately a month in solitary confinement, on 19 January 2020, he was conditionally released on bail of 4.5 billion rials (approximately \$100,000).
26. The source further submits that at Mr. Ganji's first court hearing, in June 2020, the judge increased his bail to 30 billion rials (approximately \$700,000), thus forcing Mr. Ganji to return to Evin Prison for six days until he could afford to pay the bail.
27. On 28 December 2020, Mr. Ganji was sentenced to 11 years in prison by the judge at Branch 28 of the Revolution Court: five years for colluding against national security (Iranian Penal Code, book 5, chap. 16, art. 610); five years for membership in a group that aims to disrupt national security (Iranian Penal Code, book 5, chap. 1, art. 499) and one year for propaganda against the State (Iranian Penal Code, book 5, chap. 1, art. 500). His sentence was later upheld by the Appeals Court in Tehran on 27 February 2021.
28. On 16 October 2021, the authorities formally summoned Mr. Ganji to report on 28 October 2021 to Evin Prison in Tehran. To date, he has been held at section 209 and Ward 8 of the prison. Mr. Ganji continues to be deprived of his liberty.
29. The source submits that the death of Mr. Abtin on 8 January 2022, one month after having contracted COVID-19 for the second time, is due to the repeated abuse and neglect by the authorities despite the deterioration of his health. Mr. Khandan Mahabadi, Mr. Bajan and Mr. Ganji remain imprisoned at a significant risk, as demonstrated by Mr. Abtin's death in State custody and by repeated instances of ill-treatment and neglect throughout their imprisonment.
30. The source specifies that in April 2021, Mr. Abtin and Mr. Khandan Mahabadi were denied medical treatment when they first suffered COVID-19 symptoms in prison. Mr. Abtin's complications included severe pneumonia. He was forced to return to prison before his symptoms had subsided. In December 2021, Mr. Abtin was hospitalized and put on a ventilator due to the severity of his symptoms.
31. Mr. Khandan Mahabadi has also contracted COVID-19 in early December 2021 and was battling symptoms worsened by poor conditions in Evin prison; he was also eventually hospitalized for several weeks. Since December 2021, Mr. Bajan has also shown flu-like symptoms.
32. The writers have further been barred from proper medical treatment for other ongoing health issues. Mr. Khandan Mahabadi suffers from hypertension and osteoarthritis in his neck and Mr. Bajan from thyroid disease. Mr. Ganji requires regular medical care because he suffers from a serious heart condition and deteriorating vision, which have been exacerbated by interrogations and solitary confinement during the first instance of his detention. Mr. Abtin was denied treatment for a testicular mass for several months during 2021. When he was finally taken to the hospital in July 2021, the authorities chained him to the hospital bed. He was reportedly returned to prison without any tests having been conducted. Prior to Mr. Abtin's death in State custody, and despite his worsening medical condition, he was allegedly intimidated by the authorities and summoned for an additional investigation after writing an open letter about medical neglect of COVID-19 cases in Evin prison.
33. The source submits that the detentions of Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji are arbitrary, falling under categories I, II, III, and V of the Working Group.
34. In relation to category I, it is argued that the domestic legal basis for the detention of the above-mentioned individuals is fundamentally at odds with international standards of legality and as such, the detention of Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi has no legal basis and should not have progressed to the stages of trial, conviction and imprisonment.
35. The source also recalls that the Working Group has already raised the general issue of prosecution under vague and overly broad penal laws in the Islamic Republic of Iran on

several occasions.² The Working Group has stated that the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.³ The source maintains that due to the vague and overly broad applications of these laws, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi could not have foreseen that the publication of material about the Iranian Writers' Association for distribution among limited circles would amount to criminal conduct under these provisions; the same applies to Mr. Ganji's translation of a book.

36. In relation to category II, the source recalls that the Islamic Republic of Iran is a State party to the International Covenant on Civil and Political Rights. It submits that the deprivation of liberty of Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi violates multiple rights and freedoms guaranteed by the Covenant and the Universal Declaration of Human Rights.

37. The source notes that Branch 28 of the Revolution Court based its convictions of Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi on activities that squarely fit within the definitions of free expression, assembly and association protected by articles 19, 21 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration.

38. The source argues that Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji were imprisoned for gathering at the graves of the murdered writers, writing internal publications of the Association, and otherwise maintaining the group's legacy of peaceful opposition to State censorship. These rights to assembly and association are protected by the article 20 of the Universal Declaration and articles 21 and 22 of the Covenant.

39. The source submits that States may only restrict these rights in the interest of national security; however, the State has no evidence that the imprisonment of the above-mentioned individuals for translating a book, gathering at a gravesite or publishing material for distribution among supporters of the Association were necessary to protect the rights or reputations of others, national security, public order, public health or morals. Moreover, the laws used to imprison Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi fall outside of principles of legality for their vagueness and undue limitations of these universal freedoms.

40. In addition to violations of free assembly and association, the deprivation of liberty of Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi stems from key violations of article 19 of the Covenant and article 19 of the Universal Declaration, which uphold the right to free expression of opinion and the freedom to impart information and ideas through any media. Activities that served as evidence against the four writers include the internal publication of a book chronicling 50 years of the Iranian Writers' Association and an internal newsletter that highlighted threats to free expression in the country.

41. The May 2021 report of the Secretary-General connected Mr. Ganji's 11-year prison sentence to the case of three other members of the Iranian Writer's Association imprisoned for their work against censorship, as part of a pattern by the State of targeting writers and journalists.⁴

42. The source concludes that the detention of these four writers constitutes State retaliation against their peaceful exercise of the right to free expression, namely their opinions on government policy pertaining to censorship and political debate. Their detention is also an extension of politically motivated persecution of members of the Iranian Writers' Association.

43. In relation to category III, the source submits that the authorities have violated the rights of the four above-mentioned writers to a fair trial guaranteed by articles 9 and 14 of the Covenant and articles 9 and 10 of the Universal Declaration.

² See, for example, opinions No. 55/2013, para. 14; No. 19/2018, para. 33; No. 52/2018, para. 78; No. 83/2018, para. 58; and No. 32/2019, para. 31.

³ See, for example, opinion No. 41/2017, paras. 98–101. See also opinions No. 62/2018, paras. 57–59; and No. 32/2019, para. 31. See further Human Rights Committee, general comment No. 35 (2014), para. 22.

⁴ [A/HRC/47/22](#).

44. It is argued by the source that the cases against Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji should never have gone to trial due to the illegality of the domestic legal provisions – specifically, articles 499, 500 and 610 of the Iranian Penal Code – and the violations of their fundamental freedoms. The trials have nevertheless taken place, and the four writers were denied their rights to an impartial judiciary and access to defence counsel of their choosing. In the case of Mr. Ganji, he was also denied his right to be informed of the charges against him.

45. The source asserts that the judiciary lacks sufficient independence from the executive to ensure a fair trial, thus violating article 14 of the Covenant and article 10 of the Universal Declaration. Furthermore, it states that the two judges that heard the writers' cases are both regarded as playing prominent roles in the crackdown on freedom of expression in the Islamic Republic of Iran. The presiding judge in the case of Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi has been recognized as consistently violating fair trial standards in cases involving activists, sentencing them to excessive punishments in terms of length of the prison sentences and the low standards for administering the death penalty. The judge in Mr. Ganji's trial has previously issued sentences violating the human rights of protesters and civil rights activists.

46. The source recalls that after Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi requested to be represented by a lawyer of their choosing, who is also a member of the Iranian Writers' Association, the judge denied their request and mandated that they represent themselves in court. It is argued that by doing so, the judge violated article 14 of the Covenant. The judge also raised bail to 10 billion rials each (approximately \$240,000), forcing the three defendants into detention due to their inability to pay. Mr. Ganji's bail was also increased at his first court hearing in 2020, to 30 million rials (approximately \$700,000), in violation of domestic law,⁵ which forced him to return to Evin Prison for six days until he could afford to secure the bail.

47. The authorities have also failed to inform Mr. Ganji of the reasons for his arrest – either verbally or in writing – and failed to inform him of the charges against him for at least seven days, in violation of article 9 of the Covenant. Mr. Ganji was arrested at his apartment on 22 December 2019 on undisclosed charges. The authorities at Evin Prison also denied Mr. Ganji access to a defence counsel during his arrest in late December 2019 and his 30-day detention at Evin Prison. At Evin Prison, he was held in solitary confinement, where he was also subjected to interrogation.

48. The source concludes that the proceedings against these writers did not conform to Iranian criminal law and were conducted in retaliation for exercising their fundamental rights to opinion, expression and association.

49. Finally, in relation to category V, the source argues that Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi have been deprived of their liberty and discriminated against on the basis of their political opinion and their status as human rights defenders.

50. The source adds that domestic remedies and international appeals to release Mr. Ganji, Mr. Bajan and Mr. Khandan Mahabadi and to save Mr. Abtin's life have been ineffective. All four writers have appealed their sentences through domestic processes, which delayed their summons to prison but did not quash their sentences.

51. The source states that the partiality of the judiciary and due process violations amounting to the denial of fair trials demonstrate the ineffectiveness of the domestic criminal court system to remedy these cases.

52. It is finally noted that writers are facing dangerous conditions in prison and that the domestic remedies have proven ineffective to secure baseline medical treatment. The authorities have been repeatedly informed of the pre-existing health conditions of Mr. Abtin, Mr. Khandan Mahabadi, Mr. Bajan and Mr. Ganji and of the exacerbation of those conditions in detention.

⁵ Articles 182 and 217 of the Iranian Criminal Code of Procedure for Public and Revolution Courts do not allow for an increase in bail.

53. The source stresses the fact that Mr. Abtin died as a result of abuse and neglect by the prison authorities. In December 2021, after Mr. Abtin contracted COVID-19 in prison for a second time, the authorities delayed the administration of proper medical treatment for 10 days, despite Mr. Abtin having a high fever and displaying other symptoms. After he was finally taken to Taleghani Hospital, he was chained to a bed and denied access to his family, even as his health continued to deteriorate severely. On 1 January 2022, Mr. Abtin was put in a medically induced coma and died shortly thereafter at Sasan Hospital.

54. Meanwhile, also in early December 2021, Mr. Khandan Mahabadi contracted a severe case of COVID-19 at Evin Prison, from which he is still recovering, and which worsened his existing state of health. He also spent several weeks in Taleghani Hospital, followed by a stay in a private hospital. At Taleghani Hospital, he was constantly chained, and his family was not allowed to visit him.

Response from the Government

55. On 16 February 2022, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 18 April 2022 about the current situation of Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi. The Working Group also requested the Government to clarify the legal provisions justifying their continued detention, as well as the compatibility of those provisions with the obligations of the Islamic Republic of Iran under international human rights law and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of the above-mentioned individuals.

56. The Working Group regrets that the Government submitted a late reply on 21 June 2022, nearly two months after the deadline, without having sought an extension of the deadline as per paragraph 16 of the Working Group's methods of work. The Working Group cannot accept the reply as if it had been submitted within the time limit.

Discussion

57. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

58. In determining whether the detention of Mr. Ganji, Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a *prima facie* case of breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.⁶ In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source in a timely fashion.

59. As a preliminary matter, the Working Group takes note that Mr. Abtin died while in custody on 8 January 2022, having contracted COVID-19 in detention. He is therefore no longer detained. There is no provision in the Working Group's methods of work that precludes consideration of a case in such circumstances. Indeed, the Working Group considers it necessary to render an opinion, given that the allegations relating to Mr. Abtin's deprivation of liberty are serious and warrant further attention.⁷

Category I

60. The source argues that the writers' detention falls within category I because, the domestic laws upon which the men were detained violate international law standards pertaining to the principle of legality. The Working Group observes that the violations of the Islamic Penal Code under which Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi have been charged and prosecuted – that is, colluding against national security (art. 610) and

⁶ A/HRC/19/57, para. 68.

⁷ Opinions No. 50/2017, para. 53 (c); and 55/2018, para. 59.

propaganda against the State (art. 500) – are vague and overly broad. The same is true for Mr. Ganji, who has been accused of colluding against national security through membership in a group that aims to disrupt national security (art. 499) and propaganda against the State.

61. The Working Group has raised the issue of prosecution under vague and overly broad penal laws with the Government on several occasions,⁸ including charges of threatening national security⁹ and spreading propaganda and insulting the sanctity of Islam.¹⁰ In addition, as the Working Group has previously stated, the principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law and regulate his or her conduct accordingly.¹¹ The Working Group finds that Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi could not have foreseen that the publication of material about the Iranian Writers' Association for distribution among its supporters would amount to criminal conduct under these provisions; the same applies to Mr. Ganji's translation of a book.

62. While the Government, in its late reply, states that the legal basis for the arrest and conviction of Mr. Ganji, Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi is predicated upon articles 499, 500 and 610 of the Islamic Penal Code, the Working Group emphasizes that these laws are incompatible with international human rights law. These laws cannot be considered to fulfil the requirement of being prescribed by law and defined with sufficient precision due to their vague and overly broad language.¹²

63. The Working Group observes that vague and overly broad laws are consistently used in the Islamic Republic of Iran to criminalize the exercise of the rights to freedom of expression, association and peaceful assembly. It recalls the report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, in which he highlighted the vague national security laws and their criminalization of free expression and free association.¹³ More specifically, the Special Rapporteur has cited articles 500 and 610 of the Penal Code as vaguely defined and has stated that they contravene international human rights law and unduly limit freedom of expression, association and assembly. The Special Rapporteur has also cited article 498 of the Penal Code (establishing a group that aims to "disrupt national security") and therefore, by extension, article 499 of the Penal Code (membership in a group that aims to "disrupt national security") as another vaguely defined law in contravention of international human rights standards. The Special Rapporteur concluded that these laws allow for arbitrary application and the abuse of power.¹⁴ This case indicates that the situation continues. Vague laws may have a deterrent effect on the exercise of fundamental freedoms as they have the potential for abuse, including the arbitrary deprivation of liberty, as discussed below.¹⁵

64. For these reasons, the Working Group finds that it is impossible to invoke a legal basis for the detention and prosecution of the writers under vague and overly broad provisions that are incompatible with article 11 (2) of the Universal Declaration of Human Rights and articles 9 (1) and 15 (1) of the Covenant. The Working Group considers that the deprivation of liberty of Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji lacks legal basis and is thus arbitrary, falling under category I.

Category II

65. The source further argues that the arrest and detention of Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji fall under category II because the activities that formed

⁸ See, for example, opinions No. 55/2013, para. 14; No. 19/2018, para. 33; No. 52/2018, para. 78; No. 83/2018, para. 58; and No. 29/2021, para. 52.

⁹ See, for example, opinions No. 9/2017, para. 23; No. 19/2018, para. 33; and No. 83/2018, para. 58.

¹⁰ Opinion No. 33/2019, para. 51.

¹¹ See, for example, opinion No. 41/2017, paras. 98–101. See also opinions No. 62/2018, paras. 57–59; and No. 33/2019, para. 51. See further Human Rights Committee, general comment No. 35 (2014), para. 22.

¹² Human Rights Committee, general comment No. 34 (2011), para. 25.

¹³ [A/HRC/19/66](#), para. 13; and [A/HRC/49/75](#), para. 22.

¹⁴ [A/70/411](#), para. 23.

¹⁵ Opinions No. 10/2018, para. 55; and No. 15/2021, para. 65.

the basis of their convictions fall squarely within their fundamental rights to free expression, assembly and association protected by articles 19, 21 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration.

66. The Government, in its late reply, argues that the writers were not arrested and convicted for exercising their fundamental rights but for their support for or links to terrorist groups. In its rebuttal, the source argues that in securing their convictions, the Government has relied solely on the writers' peaceful activities that are protected by the Covenant. Such activities include their membership in the Iranian Writers' Association and peaceful participation in its activities.

67. The permitted restrictions on these rights may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals, none of which arise here. The Government, in its late reply, did not present any argument or evidence to the Working Group to invoke any of these limitations, nor did it demonstrate why bringing charges against the men was a legitimate, necessary and proportionate response to their peaceful activities, such as translating a book, gathering at a gravesite or publishing material for limited distribution.

68. Moreover, as discussed above, the vague and overly broad laws used to imprison the writers fall outside of principles of legality and unduly limit universal freedoms. In this regard, the source recalls that in its resolution 12/16, the Human Rights Council called upon States to specifically refrain from imposing restrictions under article 19 that were not consistent with international human rights law. Moreover, the 2019 report of the Secretary-General on the situation of human rights in the Islamic Republic of Iran, he noted the cases of Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi (as Mr. Ganji had not yet been sentenced) and their membership in the Iranian Writers' Association as emblematic of the harassment of writers on national security charges for mere publications opposing censorship.¹⁶ The Working Group finds to be credible the source's submission that the detention of the writers constitutes State retaliation against their opinions on government policy on censorship and political debate.

69. The Working Group consequently finds that the detention of Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji resulted from their legitimate exercise of freedom of opinion, expression and assembly, as protected by articles 19, 21 and 22 of the Covenant and articles 19 and 20 of the Universal Declaration and was therefore arbitrary, falling under category II. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Category III

70. Given its finding that the deprivation of liberty of Mr. Abtin, Mr. Bajan, Mr. Khandan Mahabadi and Mr. Ganji is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. Nonetheless, they have been tried and convicted through proceedings that, the source submits, violated their fair trial rights.

71. The source submits that Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi were not allowed to have access to the defence counsel of their choosing (see para. 44 above) and instead were ordered by the judge to represent themselves. Mr. Ganji was denied access to defence counsel during his arrest in late December 2019 and during his 30-day detention in Evin Prison, where he was held in solitary confinement and interrogated.

72. The Government, in its late reply, denies that the writers' right to access lawyers of their choice was violated, referring to article 48 of the Code of Criminal Conduct, in which it is stipulated that, concerning crimes against internal or international security as well as organized crimes that are subject to punishments stipulated within article 302 of the Code, in the preliminary investigation stage, the litigants are to choose their lawyer from the elected attorneys. The source argues that the presiding judges retaliated against the writers for selecting their own lawyer.

¹⁶ A/74/273.

73. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.¹⁷ The Working Group considers that the failures relating to access to counsel seriously jeopardized the writers' ability to prepare a defence. The fact that they were facing serious national security charges made these violations of due process all the more egregious.

74. In this regard, the Working Group refers to a 2020 report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, who noted that under article 190 of the Iranian Code of Criminal Procedure, the right of accused persons to a lawyer at the stage of preliminary investigation was guaranteed. He also noted that that right was tempered, however, by article 48, according to which individuals accused of offences against national security, of crimes punishable by death, life imprisonment or amputation, or of political or press crimes could only choose to be represented, during the investigation stage, by lawyers on a list approved by the head of the judiciary. Further, he noted that he remained concerned not only that article 48 undermined the independence of the legal profession, but also that it was a serious impediment to due process and the right to a fair trial.¹⁸

75. As a result, the Working Group finds a violation of the right of Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi to adequate time and facilities for the preparation of their defence and to communicate with counsel of their choosing under article 14 (3) (b) of the Covenant and principles 17 (1) and 18 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, as well as their right to present an effective defence through counsel of their choosing under article 14 (3) (d) of the Covenant. The Working Group notes that this case is another example of instances when legal representation was denied or limited for individuals facing serious charges, suggesting that there is a systemic failure to provide access to counsel during criminal proceedings in the Islamic Republic of Iran.¹⁹

76. The source submits that the Court of Appeals has passed its verdict on the cases of Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi without their presence in court and without hearing the defendants' final statements. It adds that this practice is in direct violation of the domestic law (art. 265-B of the Criminal Code of Procedures) and of international due process standards. In these circumstances, the Working Group finds a violation, under article 14 (3) (d) of the Covenant, of the right to be tried in their presence and to defend themselves in person.

77. The source also submits that the judges who heard the writers' cases reportedly have reputations for bias against activists and were regarded as playing prominent roles in the crackdown of freedom of expression in the Islamic Republic of Iran. In its late reply, the Government denies any fair trial violations, submitting that the verdict was reviewed by the Court of Appeal in the presence of two different judges. In its rebuttal, the source submits that the two judges in question have persistently faced accusations of fair trial violations, and that one of the judges presided over the original trial of Mr. Khandan Mahabadi and Mr. Abtin and also raised the amounts of their bail after they requested to be defended by a lawyer. He also raised Mr. Ganji's bail at a hearing in June 2020, forcing him to remain in detention for another six days before he could raise his bail. As one of the two appeal judges allegedly presided over the original trial, the Working Group finds that the right of Mr. Khandan Mahabadi and Mr. Abtin to an independent and genuine review of their convictions under article 14 (5) of the Covenant was violated.

78. The Working Group considers that the writers were not tried by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant.²⁰ This finding is strengthened by the tenfold increase to the writers'

¹⁷ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8; and Human Rights Committee, general comment No. 35 (2014), para. 35. See also General Assembly resolution 73/181; [CCPR/C/IRN/CO/3](#), para. 21; and [A/HRC/45/16](#), para. 51.

¹⁸ [A/HRC/43/61](#), para. 47.

¹⁹ [A/HRC/40/24](#), para. 12.

²⁰ Opinions No. 24/2020, para. 108; No. 31/2020, para. 56; and No. 61/2020, para. 88.

bail, reportedly in violation of domestic law, and other violations of the writers' fair trial rights. The Working Group recall that the Human Rights Committee had stated that an excessive bail amount violated the requirement under article 9 (3) that pretrial detention be exceptional.²¹ The Working Group recalls the finding of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, who indicated in his 2019 report that the judiciary acted as a repressive organ instead of an independent body towards which individuals could seek recourse.²² Reports indicate that the judiciary fails to perform an independent role and that the human rights violations and crimes appear to be part of a policy to silence and discourage perceived or real political opposition.²³

Mr. Ganji

79. The Working Group finds that the source has provided credible information, which was not rebutted by the Government, that on 16 December 2019, Mr. Ganji was arrested in his home. The Working Group also finds credible the source's rebutted submissions that Mr. Ganji was not informed about the reasons for his arrest at that time, and he was not informed about the charges against him for at least seven days. As a result, it finds that Mr. Ganji's rights deriving from articles 9 (2) and 14 (3) (a) of the Covenant, article 9 of the Universal Declaration and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment were violated.

80. Article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of the charges against them. The reasons for arrest must be provided immediately upon arrest²⁴ and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.²⁵ As for being promptly informed of the charges, the Human Rights Committee has set out within a few days of being arrested as the outer limit.²⁶ These time frames were not met in the case of Mr. Ganji. The Working Group observes that the factual circumstances of Mr. Ganji's arrest, namely that it was conducted under false pretext, with the arresting officers posing as postal workers to enter his home, strengthen the conclusion that his arrest was without legal basis.

81. Mr. Ganji was also kept in prolonged solitary confinement for approximately a month. The Working Group notes that according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards. Solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorized by a competent authority. Prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43 (1) (b), 44 and 45 of the Nelson Mandela Rules. The Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment has deemed that prolonged solitary confinement in excess of 15 days, at which point some of the harmful psychological effects of isolation can become irreversible, may amount to torture as described in article 1 of the Convention against Torture.²⁷

82. The Government, in its late reply, denies any allegation of torture during the investigation to obtain confessions from the writers. In its rebuttal, the source highlights that it is revealing that the Government raises the allegations of forced confessions under torture for the first time, when the source in its original communication only points to general abuse

²¹ Opinion No. 9/2017, para. 28. See also General Assembly resolution 73/181; and opinions No. 16/2021, paras. 51–54; and No. 29/2021, para. 41.

²² [A/HRC/49/75](#).

²³ [A/76/268](#), para. 17.

²⁴ Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58–59.

²⁵ Human Rights Committee, general comment No. 35 (2014), para. 25; and opinion No. 25/2018, para. 36.

²⁶ Human Rights Committee, general comment No. 35 (2014), para. 30.

²⁷ [A/63/175](#), para. 56; [A/66/268](#), para. 61; General Assembly resolution 68/156; [A/56/156](#), paras. 14 and 39 (f); and Human Rights Committee, general comment No. 35 (2014), paras. 35 and 56.

and mistreatment of Mr. Ganji, Mr. Abtin and Mr. Khandan Mahabadi during their detention. The source adds that security footage from Evin Prison has shown that prison authorities beat and abused individuals incarcerated at Evin Prison. The Working Group emphasizes that it is absolutely prohibited according to article 14 (3) (g) of the Covenant to torture or subject a person to ill-treatment in order to obtain a confession.

83. Referring to the source's submission in paragraphs 26–29 detailing the medical care denied to the writers and to their mistreatment, the Working Group recalls that the denial of medical care can constitute a form of torture.²⁸ Referring to certain regulations, the Government, in its late reply, argues that individuals were been sent to medical centres outside the prison at the discretion of medical doctors stationed in the prison. The source rebuts this claim, arguing that Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi were prevented from leaving Evin Prison to receive medical care. In this regard, the Working Group recalls that the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran in 2022 continued to receive reports about the denial of access to medical care in detention. Reports show an alarming number of individuals who have either become critically ill or have long-standing and serious medical conditions that have been left untreated in prison. In cases where medical furlough is granted, it comes at a critical or very late stage. He also found that several cases of death in detention due to lack of timely access to medical care had been reported.²⁹

Death of Mr. Abtin

84. The source stresses the fact that Mr. Abtin, who died on 8 January 2022 in Sasan Hospital from COVID-19 while in State custody, died as a result of abuse and neglect by prison authorities.³⁰ The Government, in its late reply, denies that Mr. Abtin died in prison due to a lack of medical treatment. On the basis of multiple eyewitness accounts and family testimony, the source contests the chronology provided by the Government. The source further argues that Mr. Abtin's decision-making ability would have been impaired by low oxygen saturation levels, and that his family was denied information and contact with him in Taleghani Hospital, where he was chained to a bed.

85. Prior to his death, Mr. Abtin was granted temporary furlough after some delay from the authorities and was transferred to the Taleghani and Sasan Hospitals, for a limited time. The Government, in its late reply, refers to the Criminal Code setting out the conditions for furlough. The source argues that, according to information obtained from people imprisoned in Evin Prison, delays of requests for furloughs are systematically built into Evin's proceedings. The source accepts that in respect of Mr. Khandan Mahabadi and Mr. Abtin, international solidarity and outcry about their dire circumstances sped up the normal proceedings, but under "normal" circumstances, if a prisoner's condition worsens suddenly, the procedures in place are inadequate to address their health conditions in a timely manner. The source submits that this is because prison authorities only consider and rule on requests from families and lawyers of political prisoners on Sunday and Tuesday, and that if a request comes on Wednesday, it is not responded to until Sunday.

86. The Working Group finds that such treatment and conditions of detention violated rules 1, 24, 27 and 30 of the Nelson Mandela Rules and affected the writers' ability to prepare a defence, jeopardized the principle of equality of both parties and violated their right to a fair trial.³¹

87. For the reasons above, the Working Group concludes that the breaches of the fair trial and due process rights of Mr. Ganji, Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi are of such gravity as to give their deprivation of liberty an arbitrary character, falling within category III.

²⁸ [A/HRC/38/36](#), para. 18; and opinion 20/2022, para. 103.

²⁹ [A/HRC/49/75](#), para. 21.

³⁰ See also communication AL IRN 1/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26956>.

³¹ Opinions No. 92/2017, para. 56; and No. 32/2019, para. 42. See also [E/CN.4/2004/3/Add.3](#), para. 33; and opinions No. 47/2017, para. 28; No. 52/2018, para. 79 (j); and No. 53/2018, para. 77 (c).

Category V

88. The source submits that the detention of the writers falls under category V as they have been deprived of their liberty and discriminated on the basis of their political opinions. It argues that they are being persecuted for their association, political involvement and writings. In its late reply, the Government denies this claim, arguing that no one is prosecuted simply for having a belief or belonging to a particular class, group, religion or ethnicity.

89. The Working Group recalls several non-cumulative indicators that serve to establish the discriminatory nature of detention based on actual or perceived political opinion. These include the following: the deprivation of liberty was part of a pattern of persecution against the detained person, including, for example, through previous detention; other persons with similarly distinguishing characteristics have also been persecuted; or the context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights.³²

90. With regard to these non-cumulative indicators, the Working Group relies on the submissions of the source that peaceful opposition to State censorship is one of the fundamental tenets of the Iranian Writers' Association. As board members, Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi have expressed this belief in their public statements and personal lives. The source details the pattern of persecution against the writers, noting that Mr. Khandan Mahabadi was first arrested in 1981 and Mr. Bajan has faced interrogations since 2005 in relation to their anti-censorship advocacy. In 2013, Mr. Abtin and Mr. Khandan Mahabadi were charged with propaganda against the State by the Culture and Media Court for disseminating flyers about the Iranian Writers' Association. Moreover, Mr. Khandan Mahabadi and Mr. Abtin were officially elected to the board of the Iranian Writers' Association in 2014, and they faced home raids, investigations, and harassment. Mr. Abtin was arrested in 2016 and again charged with propaganda for posting a photo on social media documenting the police abusing his colleague who was attending a memorial marking the anniversary of the murders of dissident Iranian writers and poets in the 1990s.

91. The source also articulates the historical and violent persecution of members of the Iranian Writers' Association. The Working Group finds to be credible the source's submission that the detention of the writers constitutes State retaliation against them for their opinions on government policy on censorship and political debate, and also constitutes an extension of the politically motivated persecution of members of the Iranian Writers' Association.

92. Furthermore, in the discussion above concerning category II, the Working Group established that the writers' detention resulted from the peaceful exercise of their rights under international law. When detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.³³ The source refers to the report of the Secretary-General's of May 2021, in which he connected Mr. Ganji's 11-year prison sentence to the case of other members of the Iranian Writers' Association imprisoned for their work against censorship as part a pattern of targeting writers and journalists.³⁴

93. The source, in its rebuttal of the Government's late reply, refers to the 2019 report of the Secretary-General on the Islamic Iran, which highlights the detention of writers (naming Mr. Khandan Mahabadi, Mr. Bajan and Mr. Abtin) and journalists. In his report, the Secretary-General urged the Government to ensure that human rights defenders and lawyers, journalists, writers, labour rights activists and environmentalists could perform their roles safely and freely, without fear of harassment, arrest, detention and prosecution; and to release all those detained for legitimately and peacefully exercising their freedoms of opinion and expression, association and peaceful assembly.³⁵

³² [A/HRC/36/37](#), para. 48.

³³ See, for example, opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

³⁴ [A/HRC/47/22](#).

³⁵ [A/74/273](#), paras. 27–28 and 79.

94. In the light of the above, the Working Group finds that Mr. Ganji, Mr. Abtin, Mr. Bajan and Mr. Khandan Mahabadi were deprived of their liberty on discriminatory grounds, on the basis of their political or other opinion in opposing State censorship. Their deprivation of liberty violates their right to equality before the law and equal protection of the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and was arbitrary under category V.³⁶

Concluding remarks

95. The Working Group expresses great sadness that Mr. Abtin died in custody of COVID-19 on 8 January 2022. The Working Group recalls that in its communication to the Government on 16 February 2022, the Government was urged to prioritize the use of non-custodial measures at all stages of criminal proceedings, including during the pretrial phase, in the current context of a global pandemic. The Working Group is gravely concerned at the allegations that the apparent failure of the Government to provide timely and appropriate medical care appears to have led to Mr. Abtin's death in custody.

96. The Working Group requests the Government to urgently conduct a thorough, effective and independent investigation into the circumstances that led to the death of Mr. Abtin while in custody. The investigation must include a detailed report by an independent expert on the medical and other care provided to Mr. Abtin after his arrest and must be conducted in a transparent manner with the full involvement of his family members and their legal and medical representatives.³⁷ The Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on extrajudicial, summary or arbitrary executions, for appropriate action.

97. The Working Group expresses its concern that Mr. Abtin and Mr. Khandan Mahabadi were chained while in hospital. According to article 10 (1) of the Covenant and rules 1, 24, 27 and 118 of the Nelson Mandela Rules, all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity, including through the enjoyment of the same standards of health care that are available in the community.³⁸ In particular, rule 27 (1) of the Nelson Mandela Rules requires that all prisons ensure prompt access to medical attention in urgent cases and that prisoners who need specialized treatment or surgery be transferred to specialized institutions or civil hospitals.

98. This case is one of a number of cases brought before the Working Group in recent years concerning the arbitrary deprivation of liberty in the Islamic Republic of Iran.³⁹ The Working Group is concerned that this indicates a widespread or systemic arbitrary detention in the country, which amounts to a serious violation of international law. The duty to comply with international human rights standards rests with all State organs, officers and agents. The Working Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.⁴⁰ The Working Group refers the present case to

³⁶ Opinions No. 75/2017, No. 79/2017, No. 35/2018, No. 36/2018, No. 45/2018, No. 46/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

³⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 34. See also opinions No. 36/2020, para. 79; and No. 57/2021, para. 77.

³⁸ Opinion No. 26/2017, para. 66.

³⁹ See, for example, opinions No. 18/2013, No. 28/2013, No. 52/2013, No. 55/2013, No. 16/2015, No. 44/2015, No. 1/2016, No. 2/2016, No. 25/2016, No. 28/2016, No. 50/2016, No. 7/2017, No. 9/2017, No. 48/2017, No. 49/2017, No. 92/2017, No. 19/2018, No. 52/2018, No. 83/2018, No. 32/2019 and No. 33/2019.

⁴⁰ A/HRC/13/42, para. 30. See also opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 38/2012, para. 33; No. 47/2012, paras. 19 and 22; No. 50/2012, para. 27; No. 60/2012, para. 21; No. 9/2013, para. 40; No. 34/2013, paras. 31, 33 and 35; No. 35/2013, paras. 33, 35 and 37; No. 36/2013, paras. 32, 34 and 36; No. 48/2013, para. 14; No. 22/2014, para. 25; No. 27/2014, para. 32; No. 34/2014, para. 34; No. 35/2014, para. 19; No. 36/2014, para. 21; No. 44/2016, para. 37; No. 60/2016, para. 27; No. 32/2017, para. 40; No. 33/2017, para. 102; No. 36/2017, para. 110; No. 51/2017, para. 57; and No. 56/2017, para. 72.

the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

99. The Working Group would welcome the opportunity to work constructively with the Government to address arbitrary deprivation of liberty in the Islamic Republic of Iran. Given that a significant period of time has passed since its most recent country visit to the Islamic Republic of Iran, in February 2003, the Working Group considers that it is now an appropriate time to conduct another visit. The Working Group made a request to the Government on 19 July 2019 to conduct a country visit. The Working Group recalls that the Government issued a standing invitation on 24 July 2002 to all thematic special procedure mandate holders and awaits a positive response to its request to visit.

Disposition

100. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Arash Ganji, Keyvan Bajan, Baktash Abtin and Reza Khandan Mahabadi, being in contravention of articles 2, 7, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14, 15, 19, 21 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

101. The Working Group requests the Government of the Islamic Republic of Iran to take the steps necessary to remedy the situation of Mr. Ganji, Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

102. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ganji, Mr. Bajan and Mr. Khandan Mahabadi immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global COVID-19 pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure their immediate release.

103. The Working Group considers that, taking into account all the circumstances of the case, in particular the death of Mr. Abtin in custody, the appropriate remedy would be to accord Mr. Abtin's family an enforceable right to compensation and other reparations, in accordance with international law.

104. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ganji, Mr. Bajan, Mr. Abtin and Mr. Khandan Mahabadi and to take appropriate measures against those responsible for the violation of their rights.

105. The Working Group requests the Government to bring its laws, particularly articles 499, 500 and 601 of the Islamic Penal Code, into conformity with the recommendations made in the present opinion and with the commitments made by the Islamic Republic of Iran under international human rights law.

106. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, for appropriate action.

107. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

108. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Ganji, Mr. Bajan and Mr. Khandan Mahabadi have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Ganji, Mr. Bajan, Mr. Khandan Mahabadi and the family of Mr. Abtin;

(c) Whether an investigation has been conducted into the violation of Mr. Ganji's, Mr. Bajan's, Mr. Khandan Mahabadi's and Mr. Abtin's rights and, if so, the outcome of the investigation;

(d) Whether an investigation has been conducted into the death in custody of Mr. Abtin and, if so, the outcome of the investigation;

(e) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Islamic Republic of Iran with its international obligations in line with the present opinion;

(f) Whether any other action has been taken to implement the present opinion.

109. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

110. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

111. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴¹

[Adopted on 30 August 2022]

⁴¹ Human Rights Council resolution 42/22, paras. 3 and 7.